

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**DENNIS HUEDEPOHL dba
BRECKENRIDGE ESTATES MHP**

Johnson County, Iowa

ADMINISTRATIVE CONSENT
ORDER

NO. 2014-AQ-14
NO. 2014-SW-05

TO: Dennis Huedepohl
2282 U Avenue
Williamsburg, Iowa 52361

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Dennis Huedepohl dba Breckenridge Estates MHP for the purpose of resolving the air quality and solid waste disposal violations which occurred at Breckenridge Estates MHP located in Iowa City, Iowa. In the interest of avoiding litigation the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Ryan Stouder, Field Office #6
Iowa Department of Natural Resources
1023 West Madison Street
Washington, Iowa 52353
Phone : 319/653-2135

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone : 515/725-9572

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part, Iowa

APR 21 2014

IDNR AIR QUALITY

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DENNIS HUEDEPOHL dba BRECKENRIDGE ESTATES MHP

Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Dennis Huedepohl owns Breckenridge Estates MHP (Breckenridge Estates) located at 4494 SE Taft Avenue, Iowa City, Iowa. Breckenridge Estates is a mobile home community with 111 service connections for mobile homes and an office building. Breckenridge Estates is a public water supply and utilizes one well and has a semi-public wastewater packaged activated sludge plant.

2. On July 25, 2013, DNR Field Office 6 received notification that the water supply/wastewater affidavit operator for Breckenridge Estates had resigned. On July 26, 2013, Ryan Stouder, DNR Field Office 6 environmental specialist, visited Breckenridge Estates to verify who was conducting the affidavit water supply/wastewater operation. During the visit, Mr. Stouder observed that a trailer had been demolished at Lot B3. Part of the trailer was burned or partially burned and the rest of the trailer pieces were piled in the weeds. Mr. Stouder also observed evidence that open burning of tires, household waste, appliances, pallets, and various other solid waste had occurred on site. The solid waste was scattered around the site and some of the solid waste had been burned while other solid waste had been disposed of on the property. Mr. Stouder collected several samples of the trailer demolition debris from the burn pile and various pieces in the weeds. Nine of the 19 samples collected by Mr. Stouder indicated regulated amounts of asbestos. Mr. Stouder contacted Adrian Michel Cuevas, Breckenridge Estates manager, by telephone. Mr. Cuevas stated that he and his helpers had removed the trailer and they planned to recycle the scrap metal. Mr. Stouder informed Mr. Cuevas that open burning, improper solid waste disposal and disposal of the trailer were not allowed. Mr. Cuevas stated the site would be cleaned up.

3. On August 8, 2013, a Notice of Violation letter was issued to Mr. Huedepohl for the open burning and solid waste disposal violations identified during the DNR Field Office 6's July visit to Breckenridge Estates. The letter required that all demolition waste, rubbish, ash and other non-salvageable solid waste be removed from the property in accordance with state and federal requirements. Mr. Huedepohl was required to submit copies of all disposal receipts to DNR Field Office 6. The letter also indicated that a follow-up inspection would be conducted and that further referral for legal enforcement may occur.

4. On August 22, 2013, Mr. Stouder returned to Breckenridge Estates to conduct a follow-up inspection. During his inspection he noted that household wastes and demolition materials had been burned. The demolition materials

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DENNIS HUEDEPOHL dba BRECKENRIDGE ESTATES MHP

included building materials, wood, insulation and wiring. Additional solid waste had been deposited on the burn pile. The solid waste material from Mr. Stouder's first visit to the facility had not been removed from the site.

5. On August 26, 2013, a Notice of Violation letter was issued to Mr. Huedepohl for the open burning and solid waste violations observed during Mr. Stouder's August 22, 2013 visit. The letter informed Mr. Huedepohl that the matter was being referred for further enforcement. The letter also required that the solid waste, rubbish, ash and other non-salvageable solid waste from the site be removed with the disposal receipts submitted to DNR Field Office 6 by September 15, 2013.

6. On September 12, 2013, Mr. Stouder returned to Breckenridge Estates and noted that open burning of solid waste was continuing at the property. He also noted that the solid waste debris had not been removed. On September 23, 2013, Mr. Stouder visited Breckenridge Estates and noted that the open burning was continuing. Mr. Stouder observed a Breckenridge Estates employee adding trees to the burn piles. The employee stated that Mr. Cuevas was not aware of the violations cited in the Notice of Violation letters. The employee stated that he and Mr. Cuevas would have the solid waste debris removed immediately and would provide the disposal receipts to the field office as soon as possible.

7. On October 1, 2013, a Notice of Violation letter was issued to Mr. Huedepohl for the open burning and solid waste violations. The letter informed Mr. Huedepohl that the matter was being referred for further enforcement. The letter also required that the solid waste, rubbish, ash and other non-salvageable solid waste from the site be removed with the disposal receipts submitted to DNR Field Office 6 by October 15, 2013.

8. On November 11, 2013, Mr. Stouder returned to Breckenridge Estates and noted that most of the solid waste material had been removed from the site. A pile of lumber and wood waste had been placed with the trees and leaves. Additionally, most of the tires and household waste had been removed from the site. The disposal receipts were not submitted to DNR Field Office 6 to verify proper disposal of the materials.

9. Breckenridge Estates personnel had prior knowledge of the open burning and solid waste regulations. In April 2012, Mr. Stouder visited Breckenridge Estates because he noted black smoke coming from the property as he was driving by. Mr. Stouder noted that approximately 50 tires, household waste, a stove and a demolished trailer were being burned. Mr. Stouder met with Mr. Cuevas regarding the burning. DNR issued a Notice of Violation letter for the open burning and solid waste disposal violations. On April 11, 2012, Mr. Stouder returned to Breckenridge Estates and noted that all of the solid waste material had been removed and disposed of at the Iowa City landfill.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DENNIS HUEDEPOHL dba BRECKENRIDGE ESTATES MHP

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). On several occasions between July 2013 and September 2013, Mr. Stouder observed evidence of the ongoing open burning of solid waste including demolition debris, appliances, and household waste. The above-facts indicated violations of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. On several occasions between July 2013 and September 2013, Mr. Stouder observed evidence of the ongoing open burning of solid waste including demolition debris, appliances, and household waste instead of the materials being disposed of at a permitted landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Dennis Huedepohl dba Breckenridge Estates agrees to do the following:

1. Dennis Huedepohl dba Breckenridge Estates shall immediately cease all open burning and improper solid waste disposal at Breckenridge Estates;
2. If not already completed, Dennis Huedepohl dba Breckenridge Estates shall properly dispose of all remaining solid waste on the property within 30 days of the date the Director signs this administrative consent order and shall submit the landfill receipts to DNR Field Office 6 within 10 days of the disposal; and
3. Dennis Huedepohl dba Breckenridge Estates shall pay a penalty of \$5,000.00 within 30 days of the date the Director signs this administrative consent order.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DENNIS HUEDEPOHL dba BRECKENRIDGE ESTATES MHP

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. Iowa Code section 455B.146A provides for more serious criminal sanctions for the air quality violations. 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$5,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." The economic benefit of the improper disposal by open burning is unknown because the amount of solid waste disposed of is unknown because of the open burning. The economic benefit would be limited to landfill disposal fees and associated transportation costs. Based on this information, it is estimated that Mr. Huedepohl has gained an economic benefit of at least \$1,000.00 and that amount is assessed for this factor.

Gravity of the Violation - One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. The open burning and improper solid waste disposal may adversely impact the health of the citizens in the area surrounding the burn site. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Additionally, the DNR has expended a large amount of staff time in investigating the matter and in

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DENNIS HUEDEPOHL dba BRECKENRIDGE ESTATES MHP

attempting to work with the facility to properly dispose of the solid waste at the property. Therefore, \$2,000.00 is assessed for this factor.


Culpability – Mr. Huedepohl and Breckenridge Estates have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. On several occasions, DNR Field Office 6 explained the open burning and solid waste regulations to Mr. Huedepohl and Breckenridge Estates. Based on the above considerations, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Dennis Huedepohl dba Breckenridge Estates. For that reason Dennis Huedepohl dba Breckenridge Estates waives the right to appeal this administrative consent order or any part thereof.

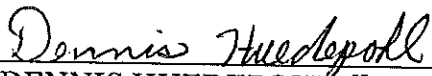
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 30th day of
April, 2014



DENNIS HUEDEPOHL dba
BRECKENRIDGE ESTATES MHP

Dated this 7th day of
April, 2014

AQB (Con 10-6 Johnson County); Kelli Book; Field Office 6; EPA; VI.C, VII.C.1